



Generally Speaking

COMINGS and GOINGS

Please Welcome

AAGs Kimberly Allen and **Jonathan Clement**, Anchorage Human Services Section. **AAG Allen** has taken the Medicaid Recipient position.

Tanya Latham, Library/Supply Clerk. Tanya joined the Legal Support Section in Anchorage.

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Cassidy Nichols and **Jason West** became members of the Anchorage Torts and Worker's Compensation Section, both in **LOA I** positions.

Kristi Duff, **LOA I**, was welcomed back to the department and will be helping the Anchorage Child Protection Section on a temporary basis. The section is also pleased **Amanda Horton**, **LOA I**, has become part of their staff.

The Human Services Section bid farewell to **AAG Nevhiz Calik**, who left the department to join the offices of the Human Rights Commission.

AAG Stuart Goering is the newest member of the Anchorage Commercial and Fair Business Section representing the Regulatory Commission of Alaska. AAG Goering comes to the department from private practice where he was a sole practitioner; in addition, he previously served in the Office of the Staff Judge Advocate for several years at Fort Richardson. In his "off" time, AAG Goering has been a volunteer legal advisor to the Alaska Wing of the Civil Air Patrol.

AAG Sharon Sigmon has joined the Bethel Child Protection Section offices.

Congratulations to **Stephanie Jordan**, Juneau Procurement Section, and **Karyl Richards**, Anchorage Legal Support Section, on their promotions. Stephanie was promoted to **Supply Technician II** and Karyl to a **Paralegal**.

AAG Paul Lyle's last day with the Fairbanks Opinions Appeals and Ethics Section was April 25. He was appointed a Fairbanks Superior Court Judge in February.

AAG Peter Putzier announced his departure from the Juneau Transportation Section to

become the department's lead Indian law attorney. AAG Putzier will be missed by all his transportation colleagues.

Best wishes and congratulations to **AAG Vanessa Lamantia**, Juneau Natural Resources Section, and husband John Lamantia, on the arrival of John Sebastian Lamantia. Little John made his debut on April 1 (no fooling) weighing in at six pounds nine ounces and measuring 19 and ¼ inches. Mom Vanessa reports her new son is quite the eater, and after making it through his delivery, she has total respect for all moms!

The Anchorage Natural Resources Section was saddened by the resignation of **AAG Tina Otto**. She left to become a magistrate with the Alaska Court System in Anchorage.

The Juneau Administrative Services Division is pleased to have the following additions to their staff: **Duvie Antonio, Accounting Tech I**, and **Carol Gray, Accountant II**. Duvie will be assisting with travel reimbursements, and Carol will handle restitution payments.

KUDOS

Bethel DAO **Victim-Witness Paralegal Blanche Jacobs** was one of two people honored as "Yukegtaaraak," or persons of the year, by the Tundra Women's Coalition, the women's shelter that serves the entire Yukon-Kuskokwim Delta. The other person of the year was State Representative Mary Nelson.

CIVIL DIVISION

Child Protection

New CINA cases based upon allegations in the Office of Children's Services (OCS) petitions:

OCS assumed emergency custody of an infant after receiving several reports that the child was not being supervised properly. In recent months

the child had reportedly been allowed to drink from the toilet, been bitten by a dog while unattended outside, and required three stitches after a fall from playing on the fireplace. There were also mental health concerns regarding the mother. The father's whereabouts are unknown.

OCS assumed custody of two children after repeated reports of harm. OCS had been working with the family to stabilize the home since 2005 but those efforts were unsuccessful. The father is a registered sex offender with allegations that he perpetrated on his stepdaughter, the home is consistently filthy, and the parents failed to follow through with needed services for the children. The children were placed in foster care.

OCS assumed emergency custody of four children after allegations were made that the father had physically abused them. An examination revealed one child had bruises on her face, head and neck. Other children confirmed the abuse. The mother's whereabouts are unknown.

The Anchorage Police Department (APD) notified OCS that an infant was in need of placement and relatives could not be found. APD had executed a warrant and found the mother intoxicated. No sober adult could be found to care for the child and the father is incarcerated. OCS assumed emergency custody.

OCS assumed emergency custody of a child when the child was ready for discharge from a psychiatric hospital but the mother's whereabouts were unknown. There were serious concerns about the mother's mental health as well. The father had not been in contact with the mother since 1991 and his current whereabouts are unknown.

OCS received a report from the U.S. Embassy in Bamako, Mali that a minor Alaskan resident was being abused by his parents, who were in

the country as missionaries. Through cooperation with the embassy, the child was returned to Alaska, where he has relatives. The parents declined to come back to Alaska. OCS assumed emergency custody.

OCS received a report that a child had been vomiting blood for several days and that the mother had failed to get medical treatment for her. When OCS investigated, the mother actively evaded contact with the OCS worker, the Anchorage Police Department and her probation officer. When she was finally found, the mother tested positive for drugs. The child was taken first for medical treatment and then to a foster home. The identity of the father is unknown.

OCS received reports that two children were scared for their safety after their mother started using drugs and alcohol in their presence. Upon further investigation, more disclosures were made by the children about physical abuse in the home and the mother withholding food from them. The family has prior OCS history. OCS assumed emergency custody; the father's whereabouts are unknown.

Numerous children across the state were taken into custody as a result of serious risk of harm due to their parents' substance abuse, domestic violence and/or incarceration.

Activities

A number of AAGs from across the state attended the first Annual Child Welfare Summit sponsored by the Alaska Indian Child Welfare Association. They reported that the conference was very informative and worthwhile.

Commercial and Fair Business

Consumer Protection Unit Sends Reminder to Southeast Retailers

The Consumer Protection Unit recently sent letters to a group of retailers in Southeast

Alaska advising them of complaints of unfair or deceptive retail practices which, if true, would violate Alaska's Unfair Trade Practices and Consumer Protection Act. The practices complained of included misrepresentations about the quality and origin of items, deceptive comparison pricing, and season-long "sales." The letter advised that although the individual business receiving the letter may not have been the subject of a complaint and may not have done anything wrong, it was an appropriate time for the businesses to take the opportunity to review store policies, practices and training materials to ensure that the business does not engage in unfair acts or practices.

Superior Court Affirms Decision of Professional Teaching Practices Commission

AAG Karen Hawkins received a favorable decision from Superior Court Judge Rindner in an appeal that she briefed and argued before the court. The decision affirmed an order of the Professional Teaching Practices Commission (PTPC) reprimanding Maffit for disclosing confidential student records without a compelling professional purpose. Maffit is a special education teacher in Nome. At the end of the 2005 school year, she complained to the Nome School District Superintendent that the Director of Special Education failed to apply special education laws correctly. The superintendent investigated the allegation and decided not to discipline the now retired director, but instead indicated that he would refer Maffit's concerns to the new director to address any areas that needed correction.

Several weeks later after the superintendent issued his decision Maffit visited the homes of each of the members of the Nome School Board and delivered a packet of confidential special education student records. In the packet, Maffit included a letter in which she asked the board to find that the former Special Education Director had harassed her and had not followed special education laws. Upon receiving the packets, the individual board

members immediately recognized the confidential nature of the documents and handed the packets over to the superintendent.

The superintendent filed a complaint with the Professional Teaching Practices Commission alleging that Maffit violated the Code of Ethics for the Education Profession when she disclosed confidential student records without a compelling professional purpose. A hearing was held at which Maffit testified. Maffit testified that she knew she could have redacted the personally identifiable information from the records, but felt that the board members would have been confused if she had. In its decision, the PTPC rejected Maffit's explanation and found that the board did not need to know the students by name to review the issues Maffit had raised.

On appeal, Maffit argued that Nome School Board Policy required her to disclose the student records. Judge Rindner rejected Maffit's argument specifically citing language in the policy that prohibited disclosing student records containing personally identifiable information for exceptional children. Also, Judge Rindner agreed with the PTPC that Maffit could have easily redacted the documents and still have made her points to the board. Finally, Judge Rindner agreed that Maffit's disclosure of confidential student records did not serve a compelling professional purpose.

Division of Investments Awarded Fees and Costs in Longstanding Sea Hawk Case

In 1997, Sea Hawk Seafoods sued the state claiming the actions taken by the state to protect its interests in the Valdez Fisheries Development Association (the state's borrower to the tune of \$7 million) were a fraudulent conveyance which prevented Sea Hawk from being able to collect its \$2.2 million judgment against the Valdez Fisheries Development Association. The state had concluded its loans were in jeopardy, called the loans in default and demanded Valdez Fisheries Development Association pay to the state all of its cash. The state received payments from the

Valdez Fisheries Development Association and other parties who owed Valdez Fisheries Development Association money, totaling \$1.7 million. In order to further protect its interests and to ensure repayment of the remaining \$5+ million by Valdez Fisheries Development Association, the state approved an operating loan to them in the amount of \$1.062 million. At the end of October 2007, after 10 years of litigation, which included a chapter 11 bankruptcy, two appeals to the U.S. District Court, one appeal to the Ninth Circuit, and one appeal to the Alaska Supreme Court, the Superior Court (Judge Tan) ruled that Sea Hawk's fraudulent conveyance claims are barred by the state's sovereign immunity under AS 09.50.250(3). Sea Hawk filed a motion for reconsideration claiming it should be awarded actual attorney's fees because the state failed to timely raise the sovereign immunity defense. On April 15th Judge Tan concluded the state had not acted in bad faith or in a vexatious manner by not raising the defense until 2007. Judge Tan recognized the fact that the superior court action had been delayed by the bankruptcy and the numerous appeals and that when it finally came back to the superior court the sovereign immunity defense was timely raised. Judge Tan awarded the state \$20,544 in attorney's fees (20 percent of the fees incurred in the superior court action but does not include any fees incurred in the other cases). In addition, the state was awarded 100 percent of its costs (\$3,860). It is expected that Sea Hawk will appeal this decision to the Alaska Supreme Court.

Human Services

Litigation Update

Dr. Robert Bridges v. Karleen Jackson.

Section Chief Stacie Kraly prevailed on the cross motion for summary judgment in this matter, successfully arguing that the matter was moot.

Curyung. The parties have agreed to move the trial to December of 2008, and have scheduled formal settlement discussions with Judge Hensley.

Olsen v. Palin, et al. On April 24, Section Chief Stacie Kraly participated in an oral argument before Judge Tan on a motion to dismiss. The primary argument for dismissal was that the litigation is moot since all relief sought was provided contemporaneous to the filing of the complaint. Also participating in the motion to dismiss on related grounds was Brad Owens representing the Anchorage School District and AAG Neil Slotnick representing the Department of Education and Early Development.

Medicaid

AAG Tim Twomey and the subrogation team collected \$119,301.05 in third-party Medicaid reimbursement as a result of resolving 25 claims. Fourteen additional matters were closed with no payment. The team opened a total of 62 new third-party liability matters and one new estate recovery matter during the month. The current inventory of open matters is 767.

AAG Rebecca Polizzotto settled two Medicaid audit cases. Because of these two settlements, the client will recoup \$37,955.15 in Medicaid overpayments. AAG Polizzotto also participated in oral argument in Anchorage in a Medicaid audit case currently on appeal before Judge Suddock.

Other

AAG Rebecca Polizzotto settled two licensing cases. The first case involved the client's revocation of three assisted living home licenses issued to the owner of the homes. The revocation actions resulted from the Department of Health and Social Service's investigation into a complaint lodged against one of the three homes. As a result of the settlement, the owner voluntarily relinquished two of her three licenses permanently and agreed to significant restrictions on the third license. The second

case involved the client's revocation of a foster care license. After investigation, the Department of Health and Social Services found the foster parent to have abused foster children in care. After lengthy negotiations over a period of several weeks, the foster parents, with the assistance of counsel, agreed to voluntarily permanently relinquish their license and never apply for licensure as a foster parent again.

AAG Robin Fowler settled a licensing matter involving a provider who held both a foster care and assisted living home license. This matter resolved after mediation, whereby the provider voluntarily relinquished her license to both facilities, and will not be eligible to reapply for an assisted living home license for three years and a foster home license for five years. Additional conditions must be met as well before she can reapply for either type of license.

Labor and State Affairs

Division of Motor Vehicles

Huntley v. State of Alaska. AAG Krista Stearns settled this case after the state prevailed at summary judgment on its defense that Ms. Huntley did not have standing to challenge the validity of a DMV regulation. Ms. Huntley paid the state \$6,000 towards its costs and attorney's fees and agreed to dismiss the case with prejudice.

Elections

Water Quality Initiative Litigation. The Alaska Supreme Court granted consolidation and expedited consideration of the appeals from the conflicting decisions by Judges Torrisi and Blankenship regarding the ballot initiative proposals 07WATR and 07WTR3. Briefing will be completed by the end of May, and oral argument will be held in June.

“Clean Elections” Initiative Litigation. Briefing on whether the ballot initiative proposal 07COGA violates the single-subject rule by combining a campaign finance program in a bill with an oil production tax has been completed. Oral argument is before Judge Rindner in May. AAG Mike Barnhill is representing the Lieutenant Governor in both of these initiative matters.

Employment

Tedd L. Garcia and Leila Sheffield v. Department of Corrections, State of Alaska. On April 4, Judge Gleason granted a motion to dismiss this case with prejudice because the plaintiffs failed to file an opposition. On the order of dismissal Judge Gleason noted that the plaintiffs were granted an extension to March 20 to file their opposition, but missed the deadline. Opposing counsel has indicated that he will file a Rule 60(b) motion on the basis of “excusable neglect” because his new computer case management system did not generate a deadline reminder. AAG Jessica Srader is handling this matter.

Office of Rate Review

Bartlett Hospital Ninth Circuit Mediation. The Department of Health and Social Services and CMS (Center for Medicare and Medicaid Services) have recently settled a Ninth Circuit appeal filed by Bartlett Regional Hospital. The federal district court in its decision addressed Bartlett’s complaint about CMS’s approval of a certain amendment to the State Plan (a requirement of the Social Security Act’s Medicaid provisions). The settlement requires payment of \$200,000 additional Medicaid payments to the hospital for its 2002 and 2003 fiscal years. The settlement becomes effective only if the federal district court grants a motion to vacate its decision. The Ninth Circuit has entered an order on the parties’ stipulation for dismissal without prejudice to re-filing, and CMS and Bartlett Hospital are in the process of filing a motion to vacate with the district court. The state was not a party of the district court action

but is an intervenor appellant in the Ninth Circuit appeal.

Bartlett’s related administrative appeal was stayed in 2003 pending decision on the Ninth Circuit appeal. As a result of the settlement, the administrative proceeding has been reopened. An integral part of the settlement was removing the issue of CMS’s approval of the State Plan amendment from the administrative proceeding. Bartlett Hospital and the Office of Rate Review are in the process of briefing the status of the administrative action and will argue before the hearing examiner on May 15. AAGs Linda Kesterson and Thomas Dosik represent the state in both Bartlett Hospital matters.

Retirement and Benefits

On April 8 Governor Sarah Palin signed into law bills providing revenue to local communities and addressing the \$8 billion unfunded liability in the state’s retirements. Senate Bill 72 sets up a structure for distributing \$60 million each year to local governments for the next three years. Senate Bill 125 locks in the contribution rate for the Public Employees Retirement System at 22 percent to address the system’s unfunded liability. AAG Virginia Ragle worked with the Department of Administration on these bills and was recognized by the governor for her work.

State v. Mercer. This action by the state against its former actuary Mercer was removed to federal court, and briefing is complete on the motion to remand. Discovery has begun, and will continue through the end of the year. AAG Mike Barnhill is heading up this matter.

Workers’ Compensation

Mario Velderrain, Uninsured Employer v. Division of Workers’ Compensation. On April 10, the Alaska Workers’ Compensation Appeals Commission held oral argument in this case. AAG Rachel Witty represented the division. The uninsured employer violated a stop work

order for 255 days and was fined \$255,000. The employer argued that the fine, which is mandated by statute under AS 23.30.080(d), is unconstitutional under the excessive fines clause of the Eighth Amendment. This case is one of four uninsured employer cases currently before the commission; one is set for oral argument on June 17 and the other two are still in the briefing stage.

Legislation and Regulations

During April the Legislation and Regulations Section spent a busy month editing amendments for legislation for consideration in the regular session. The regular session adjourned on April 13. The section also edited bill reviews for bills passed during the regular session. A special session has been called for June 3 on any action of the Natural Resources Commissioner and Revenue Commissioner under the Alaska Gasline Inducement Act (AGIA). The section also edited and legally approved for filing the following regulations projects: 1) Department of Health and Social Services (rendering Medicaid providers, physical and occupational therapy services, speech-language pathology services, and registered nurse anesthetists; payment under Medicaid for psychological services); 2) Board of Fisheries (commercial purse seine specification and operations); 3) Board of Game (predation control area; methods of taking game and exceptions in Unit 9; taking and use of game in the Arctic and Western regions; taking and use of game statewide and feeding of game); 4) Department of Environmental Conservation (air quality and motor vehicle emission inspection and maintenance (I/M) program; clean water revolving loan fund interest rates); 5) Department of Natural Resources (date of implementing certain boat motor restrictions within the Kenai River Special Management Area; anadromous waters atlas and catalogs); 6) Department of Revenue (oil and gas production tax monthly reporting).

Natural Resources

Legislation and Regulations

During April AAG John Baker completed final review of the Department of Natural Resource (DNR) regulations restricting boat motor use within the Kenai River Special Management Area (KRSMA). Effective January 1, 2013, persons operating boats within the Kenai River Special Management Area with the use of a motor may use four-stroke motors only, in order to further the reduction of hydrocarbon pollution. Also during April, AAG Baker completed a bill review for HB 57, making certain changes to the status of marine parks within the Alaska state park system.

AAG Steven Daugherty reviewed Upper Cook Inlet Fishery regulations, reviewed a project making permanent and amending statewide salmon seine regulations which had previously been adopted as emergency regulations, and assisted the Alaska Department of Fish and Game (ADF&G) with implementing and preparing to make permanent emergency regulations adopted by the Board of Fisheries in March to allow and regulate ecotourism fishing. AAG Daugherty also completed a bill review on SB 254 which extended the sunset dates of the Alaska Regional Economic Assistance Program and the Commercial Fisheries Entry Commission vessel-based limited entry provisions in the weathervane scallop and Bering Sea hair crab fisheries.

AAG Lance Nelson completed review and editing of the statewide king and Tanner crab regulations for the Board of Fisheries.

Towards the close of the session, the legislature adopted seven bills relating to game issues and the Board of Game, the Big Game Commercial Services Board, and the Division of Forestry, requiring bill reviews by the Natural Resources Section. The bills relating to the Board of Game altered members' terms and

identified game as assets and game regulations as appropriations or allocations of these assets. Another bill added Alaska to the multi-state Wildlife Violators Compact which allows for cross-jurisdictional monitoring and enforcement for fish and game regulation violators. Another provided for reduced license and tag fees for nonresident military personnel assigned to Alaska and their dependents, and free licenses for resident members of the National Guard and reserves.

The bill relating to the Big Game Commercial Services Board provided it with better enforcement authority. The forestry bills allowed for consideration of all resources, natural and man-made, in fire planning and altered the boundaries of the Tanana Valley State Forest and Minto Flats State Game Refuge. Several regulations projects stemming from the January and March Board of Game meetings also had to be completed during this time. AAG Kevin Saxby did these bill reviews and regulations projects.

AAG Colleen Moore prepared a bill review for HB 295, which revised the recorder's statutes to help prepare for electronic recording, to update UCC filing forms, and general clean up. She also has the mental health budget bill.

Carlson IV. On April 11, the Alaska Supreme Court issued its decision in *Carlson IV*, largely upholding the lower court's rulings, but ruling in the state's favor on a key liability issue that will affect the damages calculation in a way that will potentially save the state a significant dollar amount in money owed to the plaintiff class.

The *Carlson* case involves a challenge by nonresident commercial fishery permit holders to the 3:1 nonresident differential the state charged for many years (e.g., if the resident permit fee was \$150, the nonresident fee was \$450). In earlier proceedings in the case, the Alaska Supreme Court had held in *Carlson I* that the Privileges and Immunities Clause of the U.S. Constitution requires "substantial equality" of treatment of residents and similarly situated

nonresidents, and that, in setting nonresident fees, the state could take into account residents' pro rata shares of state revenues to which nonresidents make no contribution. The state could legally charge nonresidents more as long as the fee differential had a close relationship to the goal of equalizing the economic burden.

In *Carlson II*, the Court ruled the permissible fee differential to be the total of the state fisheries budget divided by the number of Alaska residents, multiplied by the percentage of the budget funded by oil revenue. In *Carlson III*, the Court refined the formula by allowing inclusion of direct and indirect fisheries costs, capital costs directly supporting fisheries, and hatchery loan fund subsidies, but excluded general government expenditures, and remanded the case to the superior court to determine whether proportionality existed in any particular instance and whether the state owed any refunds based on the formula. The state then moved for summary judgment arguing that fees should be averaged collectively across permit and license classes, rather than individually, and that the court should determine the proportionality of the differential. The superior court ruled against the state and the state appealed.

On appeal in *Carlson IV*, the state lost on the following issues:

Collective vs. individual accounting. The Court rejected the argument that the state should be able to account for nonresident fees on a collective basis, and ruled instead that the issue had been previously decided and that the state is required to compare nonresident fees individually to the permissible differential: "the relevant comparisons are between individual permit holders."

Liability issues. The Court rejected the state's arguments that the issue of liability had not yet been conclusively determined because the superior court did not explicitly rule that

nonresident fees “substantially” exceeded resident fees. The Court held that the collective accounting approach was precluded and that the superior court’s findings on liability were sufficient.

Proportionality issue. The Court held that the state failed to demonstrate proportionality between the means and end of the fee differential, finding that the 3:1 fee scheme was not rationally related to the goal of equalizing the burden of fisheries management between residents and nonresidents, essentially finding it arbitrary.

The state benefited from the last ruling in the decision:

Substantial vs. precise equality. The Court held that incidental inequality between residents and nonresidents is permissible within a rational system. In deciding the extent to which fee differentials may depart from perfect equality and still pass constitutional muster, the Court ruled that a reasonable margin of error is up to 50 percent. This ruling should result in lowering any calculation of what the state finally owes the plaintiff class by a significant amount. The plaintiffs have petitioned for rehearing on this issue.

State of Alaska v. Federal Subsistence Board, et al. On April 10, AAG Mike Sewright filed the state’s reply brief in the case pending before the U.S. Ninth Circuit Court of Appeals. AAGs Laura Bottger and Steven Daugherty assisted. The state appealed a decision by the U.S. District Court for Alaska upholding a customary and traditional use (C&T) determination by the Federal Subsistence Board granting the community of Chistochina a priority to take moose under the federal program within the entirety of Game Management Unit 12 (10,000 square miles) based on evidence of actual use by that community of a small percentage of the unit to harvest moose. The Court of Appeals may hold oral argument on the matter, possibly as early as this summer, before deciding the case.

Southeast Alaska Conservation Council v. State and University.

The state and University of Alaska received a favorable summary judgment decision from the Juneau Superior Court in the litigation over the university land grant legislation. Plaintiff environmental organizations (Southeast Alaska Conservation Council and Tongass Conservation Society) sued the state and the university claiming that the legislation created an unconstitutional dedicated fund because it conveyed approximately 250,000 acres of state land to the university’s endowment trust and required that any revenue generated from the land be deposited in the trust. The state and university argued that the legislation was constitutional because the university is a constitutionally-chartered corporation with the constitutional authority to hold title to real property and therefore has the authority to retain proceeds from its own land. The court agreed with the state and university on this point, but also found alternate grounds for upholding the legislation. Although the legislation was upheld, the state asked the Court to reconsider part of its decision that addresses issues not briefed by the parties and not necessary to resolving the dispute. The court declined to reconsider its decision.

Kuzmin v. Commercial Fisheries Entry Commission.

On April 14, Superior Court Judge William Morse affirmed the decision of the Commercial Fisheries Entry Commission (CFEC) denying a Tanner bairdi crab pot fishery permit to Fedor Kuzmin. This case presented a single issue – whether Fedor and his son Romil fished as partners in 2001, or was Fedor working as a crew member under his son, the skipper. A partner would receive participation points for the season, but a crew member would not. In the case of Fedor’s permit application, receiving 2001 participation points would push his point total above the threshold to be awarded a permit.

The court applied the four-part test of partnership as defined in the Uniform Partnership Act: 1) associational intent, 2) co-

ownership, 3) business, and 4) for profit. The court found that the Commercial Fisheries Entry Commission was presented with conflicting evidence. In reviewing this evidence, the court noted that all deliveries were made under the son's permit. The court also pointed to a statement by the son that "My dad Fedor Z. Kuzmin was my deckhand and I Romil Kuzmin was the captain on the F/V Mikado that year." Given this evidence, the court ruled that substantial evidence supported the Commercial Fisheries Entry Commission's conclusion that Fedor Kuzmin failed to prove that he was a partner with his son Romil in 2001. The decision was therefore affirmed. AAG Vanessa Lamantia represented the Commercial Fisheries Entry Commission.

Chuitna River

The section assisted the Department of Natural Resources and Alaska Department of Fish and Game with preparation of a report to the Bureau of Land Management in support of a finding that the Chuitna River is navigable. Section Chief Elizabeth Barry and AAG Mike Sewright worked on this project. Over many years, the Bureau of Land Management has made contradictory findings on the navigability of this river near Tyonek and is considering eliminating the easements reserved for public access pursuant to §17(b) of the Alaska Native Claims Settlement Act. The river is popular with sport fishers and guides, and receives substantial public use. The state argues that present use of the river conclusively establishes its susceptibility to commercial use at statehood and its navigability, and thus the state owns the submerged lands.

Endangered Species Act Issues

Polar Bears

The Department of the Interior has yet to issue a final listing decision for the polar bear. The decision was due by January 9, 2008, and in response to this delay, plaintiffs Center for Biological Diversity, Natural Resources Defense

Council, and Greenpeace, Inc. filed a complaint for declaratory judgment and injunctive relief in the U.S. District Court for the Northern District of California. The federal defendants have proposed June 30, 2008 as the date to submit the final listing determination to the Federal Register because of the time needed to review the complex scientific and legal issues involved in this decision. The plaintiffs seek instead an order for a determination within seven days of the hearing on their motion for summary judgment set for May 8, 2008.

Cook Inlet Beluga Whales

The final determination date for listing Cook Inlet Belugas was extended six months to October 20, 2008 under the Endangered Species Act section 4(b)(6). In announcing this decision in the Federal Register, the National Marine Fisheries Service stated, "We believe that substantial disagreement exists regarding the population trend, and that allowing an additional six months to obtain the 2008 abundance estimate would better inform our final determination as to whether the Cook Inlet beluga whale should be listed as endangered under the Endangered Species Act."

Ribbon and Other Ice Seals

On March 28, 2008, the National Marine Fisheries Service announced that a petition to list the ribbon seal as a threatened or endangered species presented "substantial scientific or commercial information indicating that the petitioned action may be warranted." The petition submitted by the Center for Biological Diversity identifies loss of sea ice habitat from climate change as the primary threat to the ice-dependent ribbon seal. The National Marine Fisheries Service has initiated a status review of the ribbon seal and added the other ice seal species including bearded, ringed, and spotted seals. Information and comments to the National Marine Fisheries Service are due May 27, 2008.

Lynn Canal Herring

On April 11, the National Marine Fisheries Service announced in the Federal Register the finding that listing Lynn Canal Pacific herring as threatened or endangered was not warranted because this population does not constitute a species, subspecies, or distinct population segment under the Endangered Species Act. However, the National Marine Fisheries Service stated that it is part of the larger Southeast Alaska distinct population segment of Pacific herring and National Marine Fisheries Service will proceed with a status review of the Southeast Alaska distinct population segment to determine whether it warrants protection under the Endangered Species Act. AAGs Brad Meyen and Steven Daugherty work with the Alaska Department of Fish and Game on these issues.

Opinions, Appeals & Ethics

Ethics

AAG Judy Bockmon prepared three written advisory opinions this month, and addressed a variety of informal ethics inquiries by email and phone. She completed the training manual for designated ethics supervisors, and continues work on investigations of alleged ethics violations and anticipates issuing written findings, closing one significant investigation in the near future.

AAG Bockmon is also working on an advisory opinion in response to the request from the Department of Administration addressing the limits on personal use of state-owned cell phones, blackberries, laptops and any other state-owned equipment that may be used for personal purposes.

Appeals/Litigation

Krone v. State. AAG Dave Jones argued an appeal before the Alaska Supreme Court involving an attorney fees issue. The appeal concerns whether the superior court erred in

reducing the amount of its initial attorney fees award to the representatives of a class of Medicaid recipients who prevailed on their constitutional claims. Initially, the superior court awarded the class representatives double their “reasonable actual fees.” However, the superior court reduced that initial award after the Alaska Supreme Court issued its decision in *State v. Native Village of Nunapitchuk*, in which the court upheld the validity of the legislature’s statutory abrogation in 2003 of the public interest litigant doctrine. In reducing the award, the superior court explained that it initially awarded double fees to encourage public interest litigation of this type, but *Nunapitchuk* made that an invalid basis for enhancing awards. The superior court therefore awarded the class representatives their full reasonable attorney fees, without enhancement, instead. The class representatives argued that the superior court misinterpreted the effect of *Nunapitchuk*. The state argued that the superior court did not err and that, under the new statute that applies to fee awards for constitutional claims – AS 09.60.010 – an enhanced fee award would have been inappropriate.

Karrie B. v. Catherine J. & State, Office of Children’s Services. The Alaska Supreme Court decided this case, affirming the trial court’s denial of the state’s petition to terminate a mother’s parental rights. The trial court made all findings necessary for termination except that termination would serve the children’s best interests. The guardian ad litem appealed to the supreme court, arguing that the trial court erred as a matter of law when it considered several factors – including that a permanent placement had not been identified for the children, the mother had demonstrated a period of sobriety, and the children shared a bond with their mother – in determining whether the children’s best interests supported termination of the mother’s parental rights. The supreme court held that consideration of these factors was appropriate in determining the children’s best interests. The court did not address the

state's argument that the trial court's decision was clearly erroneous in light of the evidence presented at trial. AAG Mike Hotchkin handled the appeal.

State v. Okuley. The state filed an appellant's brief in this attorney's fees appeal. Ms. Okuley filed a class action lawsuit, arguing that the Alaska Department of Health and Human Services had violated the Administrative Procedures Act by changing its policy on the qualification requirements for Interim Assistance for Supplemental Security Income. The court agreed, and the state determined the amount of retroactive benefits it owed the class members. The attorneys for the class were entitled to a large attorney's fee award from the state under Rule 82, but in addition they sought and received a far larger award to be taken from the benefits recovered for their clients. The state appealed on the issue of attorney's fees, on behalf of the class members, whose recovered benefits were reduced by the attorney's fee award to their counsel. Section Chief Joanne Grace is handling the appeal.

P.G. v. State, Office of Children's Services. AAG Megan Webb filed an appellate brief on behalf of the Office of Children's Services (OCS) in this case. The case involves the termination of P.G.'s rights to his two sons, A.G. and W.G. On appeal, P.G. asserted that he had remedied the conduct that placed the boys at substantial risk of harm and that it was not in the boys' best interests for their father's parental rights to be terminated. OCS argued that the trial court's order terminating P.G.'s parental rights was proper based on the specific facts of the case.

In November 2004, the Office of Children's Services assumed custody of the boys based on concerns of physical abuse, domestic violence, neglect, substance abuse, and P.G.'s mental health. A.G. demonstrated characteristics of a child exposed to abuse, neglect, and violence and was classified as a severely emotionally disturbed child; he was also highly disruptive in

school and routinely threatened to harm others. As a result of his behavioral and mental health issues, he was admitted twice to North Star Behavioral Health for psychiatric treatment. W.G. also showed characteristics of a child exposed to abuse and neglect, was cognitively challenged, frequently engaged in hostile, threatening conduct, and would physically harm not only others but himself. The problems manifested by these young boys were the result of P.G.'s conduct and the conditions in the home.

Over the course of several years, the Office of Children's Services worked with P.G. to remedy the conduct that placed his children at risk of further harm. Although he participated in parenting classes, an anger management program, and supervised visits, P.G. was never able to demonstrate the skills learned in these programs. Instead, he continued to have difficulty controlling his anger, reacted to service providers in a hostile, threatening manner, and refused to follow the parenting guidelines regarding appropriate conduct during visits with his sons. More importantly, P.G. failed to recognize his own mental health issues, the severity of his sons' mental health, educational, and behavioral issues, their need for on-going treatment, and his role in harming the boys. Without taking these steps, he continued to place his sons at substantial risk of harm. Given these circumstances and the fact that the boys needed stability and security in their lives (which P.G. could not provide), it was in their best interests for the trial court to terminate P.G.'s parental rights.

McCaughey v. Tesoro Alaska Co. The state participated as amicus curiae in this case, in which the plaintiff challenged the constitutionality of AS 23.30.045 and AS 23.30.055. The plaintiff alleged that the 2004 amendments to these statutes violate his right to equal protection under the Alaska Constitution. These statutes affect workers' compensation benefits. Considering cross-motions for summary judgment and the state's amicus brief, the superior court

concluded that, under minimal level scrutiny, the statutes did not violate Alaska's equal protection clause. It then granted the defendant's motion for summary judgment and denied the plaintiff's cross-motion. AAG Megan Webb wrote the amicus brief for the state.

Regulatory Affairs and Public Advocacy (RAPA)

Pre-Filed Testimonies

U-07-112, Bethel - electric. In June 2007, Bethel Utilities Corporation (BUC) filed its successor rate case to prior Docket U-03-11 which was resolved by stipulated settlement with the attorney general. The utility now seeks a 9.8 percent across the board rate increase for electrical service. Responsive to Regulatory Commission of Alaska invitation, the attorney general/RAPA filed an election to participate in the case in October 2007.

On April 7, RAPA pre-filed the direct testimony of staff witness Parker J. Nation, Jr. which challenges the utility's proposed operating expenses (including managers' compensation, certain legal expenses, and rate case and depreciation expenses) and the proposed overall rate of return on rate base. If successful, RAPA's advocacy would reduce the utility's proposed rate increase by approximately six percent. An adjudicatory hearing is scheduled for June 16.

U-08-04, AWWU - water and sewer. Anchorage Water and Wastewater Utility (AWWU) filed a required depreciation study in January, 2008. The utility had not filed one since 1985. Depreciation expense is the largest single expense paid by a utility and it can have major impact on utility rates. Responsive to Regulatory Commission of Alaska request, the attorney general/RAPA filed an election to participate in the case on February 8, 2008.

On April 14, RAPA filed the direct testimony of its contract expert witness, William Dunkel, regarding appropriate depreciation rates. Dunkel's pre-filed testimony takes issue with AWWU's proposed methodology ("Equal Life Group") for determining depreciation rates and recommends the use of the "Average Service Life" procedure, consistent with commission precedent under the circumstances. If adopted by the commission, RAPA's position would decrease the applicable depreciation amount by approximately \$1 million. An adjudicatory hearing is scheduled for July 1, 2008.

U-07-174, Enstar - natural gas. Enstar Natural Gas Co. (Enstar) filed a required depreciation study in May 2007. Enstar will be filing a comprehensive rate case later this year incorporating the results of the adjudicated depreciation study.

On April 18, RAPA filed the direct testimony of its contract expert witness, William Dunkel. His pre-filed testimony supports a 50-year "average service life" for the three Mains accounts based upon the existent period of actual data, as opposed to the utility's proposed 45-year average service life. Also, RAPA's witness disputes Enstar's failure to use "Present Value" treatment (in assessing asset retirement obligations for the Mains), inconsistent with current national requirements. If the commission agrees with RAPA advocacy on these two points, the utility's total annual depreciation expense accrual will be reduced by approximately \$1 million. An adjudicatory hearing is scheduled for June 9, 2008.

New Case

U-08-27, Lausen's - refuse. Lausen's Dependable Disposal, Inc. (Lausen) provides refuse collection along the Park's Highway from Nenana to north of Cantwell. A small provider, Lausen was historically exempt from rate regulation under AS 42.05.711(i). Now a fully regulated utility, Lausen seeks a 15 percent rate increase relative to an

approximately \$700,000 proposed revenue requirement. This is the utility's first rate case.

Responsive to Regulatory Commission of Alaska request, the attorney general/RAPA elected to participate in the case on April 3. This is a small-scale case which is not likely to pose any complex or novel ratemaking aspects. Attorney general pre-filed testimony is due September 16, 2008 and an adjudicatory hearing is scheduled for December 16, 2008.

Torts and Workers' Compensation

U.S. District Court Judge Burgess granted partial summary judgment to an Alaska state trooper based upon qualified immunity. The plaintiff alleged excessive force and violation of his constitutional rights in a seizure which resulted in physical injury. The Court held the trooper immune on the issue of the propriety of the plaintiff's seizure and the trooper's use of handcuffs as part of an investigative stop. The remaining issue to be tried is whether after the initial seizure, the trooper used excessive force in subduing the resistant plaintiff. The case is being defended by AAG Dana Burke.

In a case filed against one of our own assistant attorneys general, Superior Court Judge Morse entered summary judgment and final judgment in favor of the AAG based on absolute prosecutorial immunity and qualified immunity. Inmate Schug sued the AAG alleging fraud and conspiracy after Schug lost his personal injury case at a trial that was defended by the AAG. AAG Dana Burke successfully represented the AAG in this matter.

Transportation

Ahtna Litigation Begins

Ahtna, Inc., a Native regional corporation, filed two lawsuits alleging ownership of state lands.

Ahtna filed its first lawsuit in federal district court against Alaska Excavating, LLC, a company that had excavated gravel for the Department of Transportation and Public Facilities' use from one of the department's materials sites along the Denali Highway. Ahtna asserts it owns the materials site under the terms of the Alaska Native Claims Settlement Act. The state moved to intervene in this federal lawsuit as the real-party-in-interest and to assert its Eleventh Amendment immunity against suit in federal court. The state then filed a parallel lawsuit in state court to quiet title to the disputed property.

Ahtna filed its second lawsuit in state court against Department of Transportation and Public Facilities Commissioner Leo von Scheben, claiming title to the Brenwick-Craig Road, along the Klutina River, under the terms of the Alaska Native Claims Settlement Act. AAG Leone Hatch represents the state in these cases.

Transportation Assists Opinions, Appeals and Ethics

Section Chief Jim Cantor assisted the Opinions, Appeals and Ethics Section by filing a brief with the Alaska Supreme Court seeking to uphold a regulation requiring that schoolchildren receive tuberculosis skin tests. Children can receive an exemption from the requirement if a physician of medicine or osteopathy signs an affidavit stating in his or her professional opinion receipt of the skin test would injure the health and welfare of the child or members of the child's family or household. The appellants argued the regulation allows or should allow a naturopath to authorize an exemption. The appellants also argued the regulation violated their rights of religious freedom, liberty, and privacy.

CRIMINAL DIVISION

Anchorage DAO

In memory of LOA Marie Niemiec who died in a tragic car accident last month, the offices contributed \$325 to the organization, *Dollars for Dogs*. Marie loved dogs and the donation provided the office with an outlet for their shared sadness.

Anchorage conducted 10 trials and 79 grand juries this month.

ADA Marika Athens secured the conviction of Karen Sewell for her third felony DUI. Sewell's defense depended on the DAO's inability to locate an eyewitness to the driving. Thanks to paralegal Yvonne Willhauck's persistence, the victim was located and returned to Alaska to testify.

ADA Michal Stryszak tried Kenneth Moto for an armed robbery/residential burglary in which the victim had the presence of mind to argue with the robber about stealing a particular laptop computer. The drunken Moto elected to return the newer computer and steal an older one. Police found Moto, the computer and the knife used to intimidate the victim just a few blocks away.

ADA Ben Hofmeister tried Cress Carney in Dillingham for murdering Natalia Timurphy, a Dillingham resident. Carney had two prior felony convictions, one for sexually assaulting a woman and another for sexually-based coercion. At 43, it now appears that Carney will no longer have the opportunity to hurt anyone outside of a jail setting.

ADA Brittany Dunlop concluded the long, tortured case of James Hall, a thief who committed his 46th offense while on probation for a former felony theft. Hall, a bit of a ranting fellow, had difficult times with his public defenders (plural

because one had to be a handler while the other stood and spoke to witnesses or jurors).

In a sentencing of note, Arnold Kittick received a 50-year sentence for a sexual assault tried by ADA Taylor Winston. Kittick's crime was committed before the newest version of the sentencing law, so Judge Aarseth had to make some weighty findings in order to enhance Kittick's sentence.

Bethel DAO

The offices are very proud of Victim-Witness Paralegal Blanche Jacobs, one of the two recipients of the "Yukegtaaraak," (persons of the year). The Tundra Women's Coalition honors two people from the Yukon-Kuskowim Delta region of Western Alaska annually for their contributions to the community. Blanche has worked for the DA's office since 1989 and lived in Western Alaska for much longer. She is a valuable part of the office's team.

An increase in evidentiary hearings during the month found ADA David Buettner doing the majority of the hearings.

ADAs Buettner, Chris Carpeneti, Tom Jamgochian and A.J. Barkis kept the grand jury busy and continued to cover court in eight courtrooms along with DA Joanis.

The offices also experienced an increase in motion work which kept everyone occupied.

Moses George was charged with murder one and a variety of other charges in the close-range shooting death of his girlfriend, in which it appears children witnessed the alleged murder. This crime occurred in Akiachuk, Alaska.

Fairbanks DAO

A 35-year-old Fairbanks man, who had been previously convicted of sexual abuse of a minor in the second degree at trial, was sentenced in April to 55 years imprisonment with 25 years suspended, and was placed on supervised probation for 15 years following his release from incarceration. This defendant sexually assaulted a 13-year-old victim who was home alone babysitting her 4-year-old sister. The victim fought the defendant and succeeded in biting him on the arm and scratching his face with enough force to draw blood. The defendant fled the residence and when questioned by the Alaska State Trooper investigator denied any involvement with the victim. The victim's statements and identification were corroborated, and the defendant's denials demonstrated to be false, when the state crime lab analysis of the victim's fingernail scrapings revealed them to contain the defendant's DNA.

Following his conviction at trial in 2007, a 33-year-old Fairbanks man was sentenced in April to a composite period of incarceration of 40 years and seven months to serve for kidnapping, assault in the first degree, misconduct involving a controlled substance in the fourth degree, and misdemeanor theft. He will also be on supervised probation for 10 years following his release from incarceration. The victim, a 20-year-old casual acquaintance of the defendant (who had only met him once before), made the unfortunate decision to consume cocaine with the defendant in the bathroom of a restaurant at which both were dining. When the victim, reacting badly to the cocaine began screaming, the defendant stabbed her three times including once completely through the arm, strangled her with an apron, and then locked her in a back storage room of the restaurant where she believed she would die. While locked in the storage room, the bleeding victim began leaving clues for the police about who killed her, as she thought she would die before being found. The defendant then removed the victim from the storage room and drove her around in his car attempting to find a

good place to dump her body. In what can only be described as an Oscar winning performance, the victim somehow managed to convince the defendant to drop her off at the hospital by assuring him that she would never tell how she became injured or who injured her.

Two Fairbanks teenagers, an 18-year-old and a 17-year-old charged and prosecuted as an adult, were both sentenced to nine years in prison for hiding in a sporting goods store and then robbing it and roughing up the store manager, and then stealing a car to effect their get-away the next morning. The two defendants spent the night in the sporting goods store where they staged the theft of thousands of dollars of worth of revolvers, auto-pistols, and assault rifles. (A store security camera revealed that the duffle bag in which the bulk of the pistols and revolvers had been placed was in fact so heavy that when one of the defendant's attempted to carry the bag over his shoulder, it pulled him over backwards!) Not content with their booty of stolen guns however, the pair waited until the manager came to work the next day hoping to access the store safe, which they did after roughing up the manager after he arrived. They then carjacked a car from a college student who had just dropped her mom off for work at the sports store. Facing 11 felony charges, and having much of their antics caught on a store security tape, both pled guilty to burglary and assault in advance of trial.

A 44-year-old Fairbanks resident, who had been convicted and sentenced to three years to serve in February because of a current felony DWI, came up for disposition in April on a felony petition to revoke his probation for a 2004 felony DWI. At issue was two years of suspended time that the judge could impose at disposition. His probation officer and the district attorney both argued that all of time should be imposed because this defendant was a threat to society as long as he was drinking, and because the historical record would evidence

that when he drinks he has shown no inclination to refrain from driving (as evidenced by his sixth DWI). Indeed, the state argued society was lucky he hadn't killed anybody yet, and that you could bet the day he gets out of prison would be the day he started drinking again. His defense attorney then argued that the judge should impose only half of his time because it wasn't time to give up on this defendant because he hadn't given up on himself, that he'd been able to maintain steady employment, and that he had been able to stick with outpatient treatment for 17 months before he fell off the wagon. When the defendant, who had remained in jail since the date of his latest DWI arrest in October of last year was given his opportunity to allocate, he stated "Your honor, I appreciate my attorney doing his job and all, but if it's all the same to you, I think you ought to listen to that other fellow over there (the DA). I even wish you could give me more time than he's asking for. Because, and I'm just being honest with you, I know that I'm dangerous when I drink, but I sure could use a cold beer". The judge thanked him for his honesty and imposed all of his remaining time.

The Fairbanks Grand Jury indicted 52 persons charged with felony offenses during the month, including one 28-year-old man for his third felony DWI.

Juneau/Sitka DAO

April got off to an unusual start in Sitka with the indictment of Jason Abbott, charged with four counts of murder in the first degree and one count of attempted murder in the first degree. On Tuesday, March 25th, Mr. Abbott stabbed his grandfather, grandmother, aunt, his aunt's boyfriend and a second aunt. His grandfather, aunt and the boyfriend all died at the scene while his grandmother later died at the hospital. The second aunt survived the attack. Mr. Abbott had been in custody over the previous weekend on charges of assault in the fourth degree for threatening his mother and had been

released on his own recognizance. The last homicide in Sitka was in May 1996.

Juneau was much quieter by comparison with the usual felony DUI and drug possession cases.

Jerry Nelson was indicted on charges of failure to stop at the direction of a police officer. By the time the vehicle came to a stop, Mr. Nelson had gotten into the passenger seat while his sister climbed into the driver's seat.

Joseph McMurren was indicted on eight counts of sexual abuse of a minor in the first degree and seven counts of sexual abuse of a minor in the second degree. Mr. McMurren was known as "Grandpa Joe" to the victims who are six and eight-years-old respectively.

Kenai DAO

Thanks to the work of Office of Special Prosecutions and Appeals AAG Mick Hawley, David Koen was sentenced this month. Koen is the defendant who molested his stepdaughter in 1998 when she was eight-years-old and who had a vast collection of child pornography. The molestation was not reported until the pornography was. Troopers then obtained a series of search warrants. The superior court judge suppressed almost all of the evidence seized, based largely on the argument that the trooper did not state that the residence to be searched was the defendant's. With his usual perseverance, AAG Hawley took the case up to the Supreme Court and got a great decision; not just for this case, but for the way the court should review affidavits generally.

The victim, now almost seventeen, gave a very tearful statement at the sentencing, as did her mother, who was the defendant's wife and has since divorced him. They were both pleased with the outcome and relieved that the case was finally over. The defendant was sentenced to 38 years with 20 years suspended with 18 years to serve. It would never have happened

without the Office of Special Prosecutions and Appeals.

The grand jury's month started off with a 100-count indictment for possession of child pornography. The investigation arose from several reports of harm involving teenage boys. The majority of the pornography also involved boys, mostly from age eight to the early teens. The defendant ran an auto-detailing shop in which he employed many teenage boys and where many teenage boys hung out. Once arrested, the defendant was heard calling the teenagers from jail and directing them to destroy evidence on computers he had obtained since the time that the first search warrants were served. As a result, other warrants were obtained and newly acquired and previously hidden child pornography was discovered. This included numerous videos of mostly young boys engaged in sexual acts.

The grand jury also returned an indictment on a case in which a church youth pastor was charged with multiple counts of sexual abuse of a minor in the second degree and indecent exposure as well as ten counts of possession of child pornography. The investigation into additional victims is ongoing.

There were several extremely severe assaults this month. In one case, the defendant and the victim were both clients of a local community outreach program. The defendant erupted into an unprovoked assault on the victim, and a witness fled the scene screaming, "I'm not going to stay here if you're going to kill her." He then ran down the street and called 911.

In another assault case, the defendant smacked his friend multiple times in the head with a metal frying pan. Several bones in the victim's face were broken as a result. During the assault the victim fled the residence and the defendant followed and dragged him back, in an attempt to prevent him from reporting the attack. The grand jury charged kidnapping and attempted

murder in addition to various assaults. The victim is still recovering from his injuries.

There were also several drug cases this month. One case involved a "family friend" who came to the residence of a woman who died. He stole her prescription drugs, according to him, to prevent anyone else from getting them. However, he did advise the trooper that he stuffed tissues in the pill bottle so that no one would hear the pills rattle as he took them from the house and hid them in his car.

In another drug case, the defendant explained that she had bought her purse from the Salvation Army and the person who previously owned it must have left the cocaine, needles, and other drug paraphernalia in it when it was donated.

In the never-ending string of drug cases, one defendant was arrested in the morning on warrants and bonded out of jail that afternoon. He then was caught shoplifting at a local mini-mart and when arrested a second time was found to be in possession of numerous oxycodone pills. He explained to the officer that he was hungry so he was stealing some food until he could sell the pills, all of which were pre-sold to particular customers at a pre-determined price. He just hadn't had time to meet up with his customers yet. He didn't get out of jail after this second arrest of the day.

Following along the saga of the prior month's Whizzinator and Urinator cases, the grand jury this month heard two more cases of defendants purchasing urine in a local store and using it to produce a "clean" urinalysis when requested to do so by their probation officers.

Trials were scarce this month on the Peninsula, and that was a good thing as busy as the offices were with charging new cases and pleading and sentencing old ones.

Kodiak DAO

April was a busy month with a steady seasonal increase in the number of criminal filings in the Kodiak court. Early in the month the grand jury indicted a Kodiak man for felony assault based upon his grabbing a family member by the throat.

Mid-month, police were called to the local Pizza Hut, upon report of one employee grabbing another employee by the throat during a disagreement. A Kodiak man was indicted for felony assault as a result.

Two members of the Coast Guard were charged after police investigation revealed they had taken a woman's ATM card from the machine and used it to obtain cash and make internet purchases.

A Kodiak man was arrested for failure to register as a sex offender in the first degree.

A Kodiak woman was arrested and charged with burglary and theft after entering the local Safeway store and leaving without paying for items taken. Unfortunately for her, the store manager on duty recognized her from a prior theft in August, 2007 wherein she was convicted of pushing about \$400 worth of groceries out of the same store without paying for them.

Late in the month, police resolved a pending burglary of the local Pizza Hut when a male suspect in custody on an unrelated charge made admissions during an interview.

Palmer DAO

Renee Ellison was convicted by a Palmer jury of assault in the first degree, assault in the second degree, two counts of assault in the third degree, DUI and reckless driving. Ellison ran a red light and struck a taxicab occupied by two persons. One of the victims suffered fractures

of the lower spine and was out of work for three months. Tests revealed that Ellison's blood alcohol level was .150. Before the trial, Judge Beverly Cutler rejected a plea agreement which, in her opinion, was too harsh. ADA Mike Walsh prosecuted this case.

Angelo Real was indicted on a charge of robbery in the second degree. Real approached a 17-year-old female who was sitting in her car at a car wash. He asked to use her cell phone, and as she was handing it to him, he reached into the car and grabbed a purse from her lap. The victim struggled with Real, but he got away with the purse and the phone. Troopers responded to the scene and photographed shoeprints left in the snow. When they confronted Real at his residence, he confessed to the robbery and to burning his shoes in a wood stove. Real had been released from prison three months earlier and was on felony probation. ADA Kerry Corliss was the prosecutor.

A half-day grand jury presentment resulted in the indictments of Melissa Holcomb, her son Richard Holcomb, her nephew Joshua Gross, and her boyfriend Buddie Holmgren. As Richard Holcomb, intoxicated, was leaving a party in Big Lake last summer, he backed his vehicle into another guest's car. After being urged by other party goers to leave, Richard Holcomb and his cousin Joshua Gross left, but said that they would "be back." They returned with Melissa Holcomb and boyfriend Buddie Holmgren, who was driving his tow truck. All four were armed with pipes or bats. Melee ensued. Buddie Holmgren drove his truck into a crowd and ran a person over, fracturing the victim's two vertebrae. The Holcombs, Holmgren, and Gross returned to their home which was 200 yards away. Other parties had to drive by the Holcomb residence to leave the area. One vehicle was struck by a bullet fired from a rifle by Richard Holcomb. Melissa Holcomb also fired several shots after troopers arrived in the area. Witnesses described bullets whizzing by them. ADA Kerry Corliss prosecuted the case for the state.

On the eve of jury trial Bryanna Reid pled guilty as charged (without any plea or sentence bargain) to DUI and felony criminal mischief for kicking out a window of a state trooper vehicle on New Year's Eve. The case was handled by ADA Suzanne Powell.

When faced with a jury trial, Dennis Thompson pled as charged (without any plea or sentence bargain) to misconduct involving a controlled substance in the third degree (cocaine), misconduct involving a controlled substance in the fourth degree (heroin), and violating conditions of release. He is facing presumptive sentences. The prosecutor was ADA Suzanne Powell.

Kari Embach pled guilty to misconduct involving a controlled substance in the second degree and burglary in the first degree, and Anefesa Galaktionoff pled guilty to misconduct involving a controlled substance in the second degree, for their roles in a manufacture of methamphetamine case. This was ADA Suzanne Powell's case.

Billy Bostwick was convicted after a bench trial of misconduct involving a controlled substance in the third degree, two counts of misconduct involving a controlled substance in the fourth degree, misconduct involving a controlled substance in the sixth degree, and driving while license revoked. Bostwick was sentenced to serve four years and 20 days on these offenses, and to an additional 17 months for violating his felony DUI probation. The prosecutor was ADA Rick Allen.

Arjorie Roberts was convicted of negligent driving as charged after a bench trial. Roberts was driving too fast for the curve in the road resulting in a terrible crash that paralyzed her 22-year-old passenger. ADA Rick Allen prosecuted this case.

On April 24, 2008 a jury convicted Shawn Phillips of theft by receiving in the second degree. An officer stopped Phillips for speeding and discovered a stolen snow-machine in the

bed of the truck. Phillips and his passengers all gave different stories about where the snow-machine came from. Defendant's story at trial was that a passenger had borrowed the machine from a friend minutes before the traffic stop and had no idea it was stolen. The trial prosecutor was ADA Alison Collins.

Daniel Burke was convicted, after a jury trial, of DUI. Burke claimed he was not the driver and had a friend testify that he was the person the police saw get out of the car and walk into a grocery store. This was Burke's second DUI conviction in the last year. This was ADA Jarom Bangerter's case.

Office of Special Prosecutions and Appeals (OSPA)

Appellate Unit

The month of April saw two notable victories in appeals involving post-conviction attacks on murder convictions.

Williams v. State. AAG Mike McLaughlin chalked up a victory in this case. The defendant attacked the performance of his defense attorney over 18 years earlier in a first degree murder case. The Alaska Court of Appeals agreed with AAG McLaughlin that the defendant's confession was not rendered involuntary because the interviewing trooper had referenced the fact that he and the defendant were both in Alcoholics Anonymous and the organization's credos are honesty and taking responsibility for one's actions.

Burton v. State. AAG Blair Christensen had a no less impressive victory in this case. The defendant attacked the performance of his defense attorney 10 years earlier in another first degree murder case. The Alaska Court of Appeals agreed with AAG Christensen that the defendant's pleadings had failed to plead a *prima facie* case that the defense attorney had

been incompetent in any of the four areas claimed by the defendant.

Rural Unit

In Barrow, Judge Erlich rejected a Rule 11 agreement in a sexual abuse of a minor case as too harsh. It is alleged that the defendant strangled an 11-year-old girl until she was unconscious. When she regained consciousness she reported the incident. The parties had agreed upon a sentence of 45 years with 20 years suspended. AAG Dwayne McConnell will be dealing with this issue in May.

Both AAGs Regan Williams and Gregg Olson traveled to Bethel to help with office coverage and to handle hearings. AAG Williams prevailed in resisting a suppression motion and in successfully arguing for admission of a video tape of 14-year-old victim's statement. AAG Olson attended a status hearing on Jonathan Kashatook who is charged with murder and sexual assault of his wife. The trial in that case has been set off until February 2, 2009.

While in Bethel, AAG Olson responded to a homicide in Akiachak. Moses George is accused of killing his long-time significant other after a night of drinking. It is alleged that an argument ensued after he struck his eight-year-old daughter in the face, and that both the eight-year-old and a six-year-old granddaughter witnessed the shooting. This case will be handled by the Rural Prosecution Unit.

The unit successfully prevailed upon Judge Devaney to reconsider his method for calculating Rule 45, in which he tolled the rule only from omnibus hearing to omnibus hearing. The judge agreed that the rule should toll from the request for continuance to the next trial date. However, he declined to apply his ruling to the case in which the motion was filed, reasoning that the defendant had not been put on notice of the new calculation. Sometimes the wars can be won, but not the battles.

SAVE THE DATE

National Association of Attorneys General
Summer Meeting
Providence, RI - June 17-19, 2008

Conference of Western Attorneys General
Annual Conference
Seattle, WA - August 3-6, 2008